



DEPARTMENT OF THE NAVY
COMMANDER
MILITARY SEALIFT FLEET SUPPORT COMMAND
1283 TOW WAY DRIVE
NORFOLK, VA 23511-2419

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NOO
15 Dec 06

MEMORANDUM

**Subj: REAFFIRMATION OF POLICY AND PROCEDURES FOR PREVENTING AND
ELIMINATING HARASSING CONDUCT IN THE WORKPLACE**

1. This Policy is intended to assure that the Military Sealift Fleet Support Command (MSFSC) is taking all necessary steps to prevent sexual harassment and other forms of harassing conduct in the workplace, and to correct harassing conduct that occurs before it becomes severe or pervasive. It aligns and updates MSFSC policy with the Department of the Navy's long-standing policy on harassment in light of the Supreme Court's decisions in *Faragher v. Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

2. This policy applies to all civilian Mariners under MSFSC cognizance at sea or at shore-based facilities/offices. MSFSC shoreside employees should contact their respective Human Resource Office, EEO representative for procedures on reporting harassing conduct in the workplace.

3. **The Definition of Sexual Harassment.** Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors and other verbal conduct of a sexual nature when:

a. Submission to or rejection of such conduct is made a condition of an individual's employment.

b. Submission to or rejection of such conduct is made a basis of employment decisions affecting the individual.

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive work environment.

This definition also applies to any person, regardless of gender, who makes unwelcome verbal comments or gestures, or engages in sexually oriented teasing or spreading of rumors. Telling jokes of a sexual nature, making sexual innuendos, or physical conduct of a sexual nature can constitute sexual harassment or sexual assault.

4. **The Definition of Harassing Conduct.** For the purpose of this Policy, harassing conduct is defined as any unwelcome verbal or physical conduct based on any characteristic protected by law when:

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a. The behavior can reasonably be considered to adversely affect the work environment; or

b. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

This definition covers all forms of harassment, including race, color, gender (both sexual and non-sexual), age, national origin, disability, and religion.

5. **Policy Statement.** The MSFSC is committed to maintaining EEO principles; including a workplace free of discriminatory harassment, and the development of a comprehensive anti-harassment policy to prevent harassment on all protected bases, including race, color, religion, sex (sexual or non-sexual), national origin, age, disability, and reprisal. MSFSC does not permit any type of harassing conduct by anyone in the workplace.

MSFSC has determined that the most effective way to maintain a workplace free of discriminatory harassment is to immediately address and correct harassing conduct, even if it does not rise to the level of harassment actionable under title VII of the Civil Rights Act of 1964, as amended. A hostile environment claim under title VII usually requires showing a pattern of offensive conduct. The Command will not wait for such a pattern to emerge. Rather, the Command will initiate appropriate corrective action, including proposing disciplinary action if warranted, before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. In the usual case, a single utterance of an ethnic, sexual, or racial epithet that offends an employee would not be severe enough to constitute unlawful harassment in violation of Title VII; however, it is the Command's view that such conduct is inappropriate and must immediately be addressed. The Command will not tolerate retaliation against any employee for making a good-faith report of harassing conduct under this or any other policy or procedure, or for assisting in any inquiry about such a report. Complaints of such retaliation shall be handled pursuant to the procedures in the Policy. This policy is separate and apart from any collective bargaining agreement or statutory complaint process covering harassment.

6. **Reporting Harassment.** The procedures for reporting incidents of harassing conduct are as follows:

a. Any person who believes that he or she has been the subject of an incident of harassing conduct in violation of this policy should report the incident to: anyone in the complainant's supervisory chain; or a complainant may seek informal EEO counseling directly with the MSFSC Equal Employment Opportunity Office.

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b. All information will be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend the command in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within MSFSC with a need to know in order to carry out the purpose and intent of this Policy.

7. Inquiries into Allegations of Harassing Conduct. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:

a. Inform the EEO Complaints Manager or other EEO staff specialist as to what further action is required;

b. In consultation with EEO, take action to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including granting of appropriate interim relief to the alleged victim of the harassing conduct;

c. In consultation with EEO, document the allegation(s) received and his or her efforts to address it; and

d. Contact an Employee Relations Specialist to determine if disciplinary action is appropriate. If appropriate, initiate discipline action in accordance with procedures outlined in Civilian Marine Personnel Instruction (CMPI 750).

8. Responsibilities of Civilian Mariners. All Civilian Mariners shall be responsible for:

a. Acting professionally and refraining from harassing conduct;

b. Becoming familiar with the provisions of this Policy, complying with all requirements of the Policy, and cooperating with any inquiry under this Policy; and

c. Promptly reporting any incident of harassing conduct that he or she experiences before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile environment. The Command cannot correct harassing conduct if the conduct is not known. When an employee unreasonably fails to take advantage of this procedure and does not promptly report an incident of harassing conduct as set forth herein, the command reserves the right to raise this failure to report as a defense against a suit for harassment, in accordance with *Faragher* and *Ellerth*.

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9. **Responsibilities of Supervisors and Managers.** All supervisors and managers shall be responsible for:

a. Acting promptly and appropriately to prevent harassment in the workplace, and retaliation against those who complain of harassment;

b. Reporting, pursuant to procedures set forth under Reporting Harassment, any incident of harassing conduct that they witness or is otherwise brought to their attention;

c. Receiving and handling allegations of harassing conduct promptly and appropriately, utilizing the procedures set forth under Inquiries into Allegations of Harassing Conduct;

d. In consultation with EEO, document the allegation(s) received and his or her efforts to address it.

10. **Responsibilities of EEO.** When the EEO Complaints Manager, or other EEO staff specialist receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager or other sources, he or she shall:

a. Ensure that a prompt, thorough, impartial and appropriate inquiry is conducted.

b. Recommend appropriate action to stop any harassing conduct and prevent further harassment, including granting appropriate interim relief to the alleged victim of harassing conduct while the allegations are being investigated.

c. When an informal investigation is conducted, a written summary of the fact-finding shall be prepared by the individual conducting the informal investigation, in consultation with the EEO Complaints Manager. The summary may be brief, depending on the complexity and seriousness of the case. The summary shall be prepared promptly after completion of the inquiry and shall be submitted to the EEO Complaints Manager and the supervisor who is responsible for taking disciplinary action against the alleged harasser, once the allegations are substantiated.

d. The summary of the investigation or other documentation prepared under this procedure shall be kept confidential, to the extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend the Command in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the Command with a need to know in order to carry out the purpose and intent of the Policy.

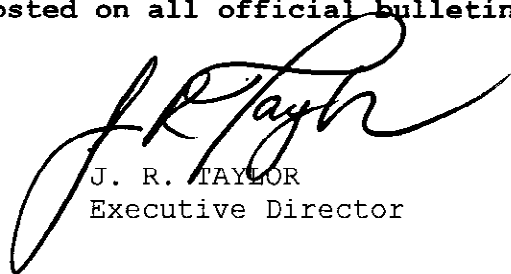
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11. **Action to be taken upon completion of the Informal Inquiry.** Upon completion of the inquiry, and in consultation with the EEO Complaints Manager, management shall promptly evaluate the evidence and determine the appropriate action to take. This responsibility shall rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct unless such supervisor is involved in the allegation. The EEO Complaints Manager shall be informed of this decision, including a decision not to act. In cases of complex or egregious alleged harassing conduct, the supervisor and EEO Complaints Manager should seek the advice of the Director, EEO and/or the Office of General Counsel.

Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, he or she shall be subject to appropriate disciplinary action, up to and including removal in accordance with CMPI 750.

Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided for under this Policy, he or she shall be subject to appropriate disciplinary action, up to and including removal in accordance with CMPI 750.

12. **This Policy is to be posted on all official bulletin boards ashore and afloat.**



J. R. TAYLOR
Executive Director

Distribution:
All MSFSC (Ships and shore stations)